

Guide to Namibia's Flexible Land Tenure Act, 2012 (Act No. 4 of 2012)



MINISTRY OF LAND REFORM
Directorate of Land Reform and Resettlement
REPUBLIC OF NAMIBIA
2016





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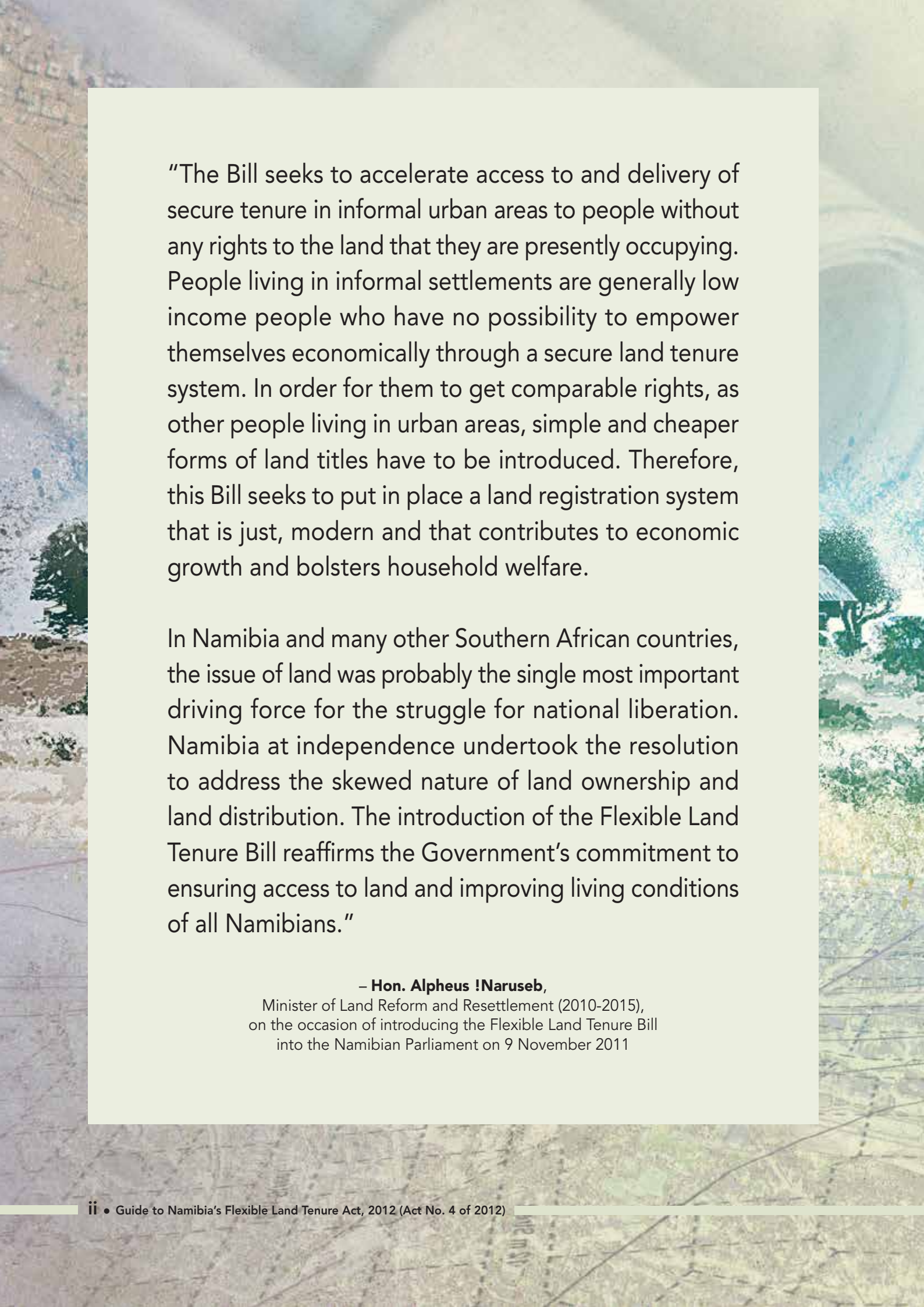
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"The Bill seeks to accelerate access to and delivery of secure tenure in informal urban areas to people without any rights to the land that they are presently occupying. People living in informal settlements are generally low income people who have no possibility to empower themselves economically through a secure land tenure system. In order for them to get comparable rights, as other people living in urban areas, simple and cheaper forms of land titles have to be introduced. Therefore, this Bill seeks to put in place a land registration system that is just, modern and that contributes to economic growth and bolsters household welfare.

In Namibia and many other Southern African countries, the issue of land was probably the single most important driving force for the struggle for national liberation. Namibia at independence undertook the resolution to address the skewed nature of land ownership and land distribution. The introduction of the Flexible Land Tenure Bill reaffirms the Government's commitment to ensuring access to land and improving living conditions of all Namibians."

– **Hon. Alpheus !Naruseb,**
Minister of Land Reform and Resettlement (2010-2015),
on the occasion of introducing the Flexible Land Tenure Bill
into the Namibian Parliament on 9 November 2011

Foreword



Namibia is experiencing rapid urbanisation in the major towns, resulting in the growth of informal settlements and an acute demand for serviced land for residential and business purposes. The Municipalities cannot keep pace with the population influx due to a combination of factors, including procedures for establishing townships, funding and town planning capacities. The increasing demand for land in urban centres led to the Government's realisation that addressing tenure security in rural areas alone would not suffice, and that the National Land Reform Programme had to be made more comprehensive by taking into account different land needs and access to land in both rural and urban areas.

The National Land Policy (1998) recognises the challenges resulting from rural-urban drift, and acknowledges the existence of informal settlements and the need to plan. The Flexible Land Tenure System (FLTS) was developed to respond to these challenges in tandem with the Flexible Land Tenure Act, 2012 (Act No. 4 of 2012).

The concept of the FLTS is to establish a parallel, interchangeable system complementary to the current formal system of freehold tenure. The FLTS introduces a modern tenure registration system that is transparent, fair and just, and which contributes to economic empowerment of communities at household level. The priority is to ensure tenure security that allows people to hold and occupy land without fear of eviction. The system enables land holders to defend their rights to the land in court, and allows access to credit for investment and development.

This Guide is a simplified version of the Flexible Land Tenure Act, in that it explains the Act's provisions in user-friendly language, and spells out, in a step-by-step format, the essential steps to be taken in the registration of the different types of land rights provided for under the FLTS.

As we implement the FLTS, we remain indebted to the Stakeholders and Development Partners who have provided technical assistance and funding for this purpose.

A handwritten signature in dark ink, appearing to read 'Utoni Nujoma', written over a horizontal line.

Utoni Nujoma, MP
Minister of Land Reform

“With the introduction of the Flexible Land Tenure Bill today, the Ministry of Lands and Resettlement offers an alternative form of tenure that addresses the core issues of imbalance and discrimination against low-income communities.”

– **Hon. Alpheus !Naruseb,**
Minister of Land Reform and Resettlement (2010-2015),
on the occasion of introducing the Flexible Land Tenure Bill
into the Namibian Parliament on 9 November 2011



Acknowledgement



The Ministry of Land Reform, within its mandate to manage, administer and ensure equitable access to Namibia's land resources, is the main actor and coordinator in the introduction of the Flexible Land Tenure System (FLTS).

The Ministry takes the lead in the implementation of the FLTS, including operationalising the Flexible Land Tenure Act (FLTA) and Regulations. An FLTS Steering Committee composed of officials from the Ministry of Land Reform (MLR), the Ministry of Urban and Rural Development (MURD) and the Local Authorities has been set up to secure partnership and coordination among the key stakeholders. The primary objective

of the Steering Committee is to ensure coordination and overall coherence with MLR and MURD policies and strategies. Further, the Steering Committee shall guide and advise over the department of FLTS-related projects as well as review and approve guidelines and manuals.

This guide to the FLTA is written in user-friendly language, and provides comprehensibility of the Act's provisions, so that stakeholders can easily understand this important new piece of legislation. It is anticipated that line Ministries, local authorities, institutions and beneficiaries will utilise this guide for their respective purposes within the FLTS, and for training.

I would like to express my sincere appreciation to all those who contributed to the production of this publication, and who extended support to the Ministry of Land Reform in the process. My special gratitude goes to our development partner, the Government of the Federal Republic of Germany, through GIZ, for the continued technical and financial support.

A handwritten signature in black ink, appearing to read 'Peter Amutenya', written over a faint, stylized outline of a building or structure.

Peter Amutenya

Permanent Secretary, Ministry of Land Reform and
Chairperson of the Flexible Land Tenure Steering Committee



FLEXIBLE LAND TENURE ACT, 2012

The objects of this Act are –

- (a) to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title;
- (b) to provide security of title for persons who live in informal settlements or who are provided with low income housing;
- (c) to empower the persons concerned economically by means of these rights.

Section 2



Land Tenure in Namibia

1.1 What is secure land tenure?

Secure land tenure means that an individual's rights over a piece of land are recognised by the law. The rights are registered with government and can be defended against other persons in court.

Before the Flexible Land Tenure Act, the only forms of secure land tenure were freehold title, sectional title and leasehold title:

- **Freehold title:** The ownership of the land, including the buildings built on it, can be held forever. Ownership can be transferred, inherited and used as security for a loan.
- **Sectional title:** The ownership of a single, individually-owned housing unit in a multi-unit complex (usually a semi-detached or apartment house) can be held forever. The sectional title owner holds sole title to the unit, but owns land and common property jointly with other unit owners, and shares the upkeep expenses on the common property with them. Ownership can be transferred, inherited and used as security for a loan.
- **Leasehold title:** This is a secure long-term lease which may be transferred, inherited, renewed and used as security for a loan.

However, many Namibians cannot register freehold, sectional or leasehold titles because:

- registration of the titles is expensive and they cannot afford them; and
- the government does not have enough human and financial resources to provide freehold titles in the necessary quantities.

1.2 Why is secure land tenure important?

Secure land tenure is of great importance for the welfare of the people of Namibia and for economic development. A system of secure land tenure:

- allows people to hold and occupy land without fear of being evicted (forced to leave);
- enables land holders to defend their rights to the land in court;
- provides access to land, regardless of race, sex and economic status;
- allows access to credit for investment and development.

Only registered land rights can be used as security for loans. Therefore, secure land tenure is important to allow Namibians, especially poor Namibians, to access money for economic development.

1.3 What categories of land exist in Namibia?

In Namibia, there are four main categories of land:

1. **State land:** This is land owned by the State and used for nature conservation (for example, Etosha National Park) and military bases.
2. **Urban land:** This land can be owned by the State, by a local authority or by private individuals inside the boundaries of local and regional authorities.
3. **Commercial farmland:** This is agricultural land held under a freehold title.
4. **Communal land:** This is land held in trust by the State for the benefit of the communities living on it.

1.4 Background on urban land tenure in Namibia

Before Namibia became an independent state in 1990, colonial urban policy and apartheid laws created towns for residential, recreational and business purposes, which only white people could use. The black population had to stay in communal areas (known as “homelands”) and was barred from owning land and securing tenure. Inferior townships with only basic services were created for the black population who worked in urban areas. These townships were heavily regulated by the government. They were not permitted to grow larger, which led to overcrowding.

Since independence, urbanisation has rapidly increased. The Namibian Constitution protects the right of all persons to reside and settle in any part of Namibia, and many people move to urban areas seeking better economic and social opportunities.

However, the many Namibians who cannot afford a freehold or leasehold title live in informal urban settlements without access to basic services. They have no legal rights to the land on which they live. Others who live on the edges of towns are uncertain about how they will be affected by the expansion of urban boundaries and the establishment of new local authorities.



1.5 The Namibian Constitution supports access to secure land tenure

Several provisions of the Namibian Constitution apply to land and property:

- **Article 16(1)** protects the right of all persons to acquire, own and dispose of all forms of immovable and movable property in any part of Namibia, individually or in association with others, and to bequeath their property after their death to anyone they wish.

- “**Immovable property**” means things that you cannot carry away, like land or a permanent house.
- “**Movable property**” means things that you can carry away, such as livestock or furniture.
- To “**bequeath**” property means to leave it to someone else after your death, such as by means of an oral or written will.

- **Article 21(1)(h)** states that every person has the right to reside and settle in any part of Namibia, although **Article 21(2)** allows the State to enact laws which impose reasonable restrictions on this right.
- **Article 10** states that all persons shall be equal before the law. No person may be discriminated against on the grounds of sex, race, colour, ethnic, religion, creed or social or economic status.
- **Article 95(e) and (j)** state that the State shall actively promote and maintain the welfare of the people by adopting policies aimed at:
 - ensuring that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law; and
 - consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health.
- **Article 100** provides that land shall belong to the State if it is not otherwise lawfully owned.

The Constitution thus provides support for the establishment of an urban land tenure system which allows persons in Namibia to obtain affordable and secure land tenure to urban land.

The **National Land Policy of 1998** has similar principles. It proposes a unitary land system, where “*all citizens have equal rights, opportunities and security across a range of tenure and management systems*”.

Overview of the Flexible Land Tenure Act

2.1 What is the purpose of the Flexible Land Tenure Act?

The Flexible Land Tenure Act creates **a new land tenure system for land in urban and settlement areas**. It supplements the existing forms of land tenure; it does not change them or replace them.

- **Urban areas** include land located inside municipalities, towns or villages as defined in the Local Authorities Act.
- **Settlement areas** are established under the Regional Authorities Act.

The Flexible Land Tenure Act creates two new forms of secure urban land tenure:

- the **starter title**; and
- the **land hold title**.

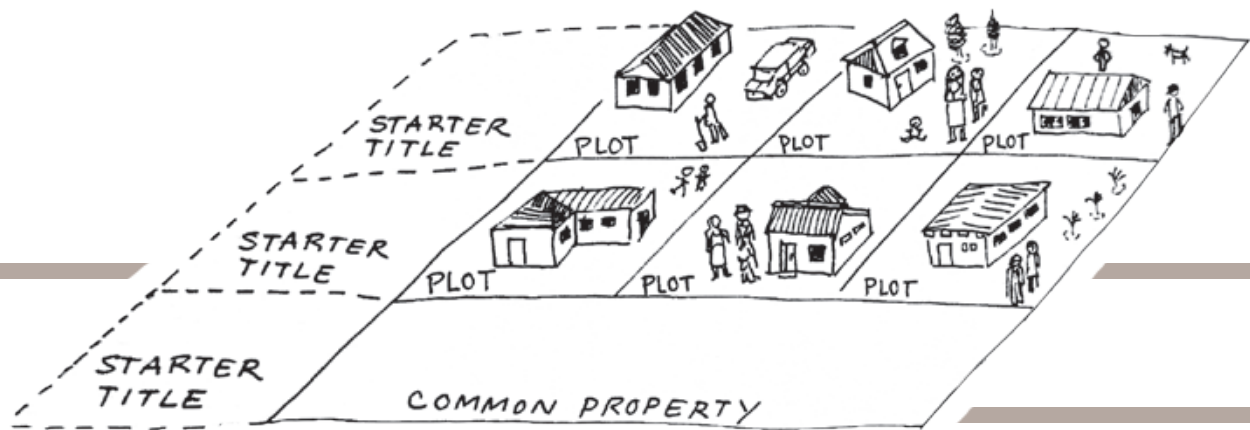
These forms of land title are simpler and cheaper to administer than existing forms of land title. The new types of secure land tenure can provide security of title for people who live in informal settlements and people who are provided with low-income housing.

The starter title and land hold title are **held by individuals**, but they are also **group-based**. Each holder has individual rights within a block of land (a “blockerf”). The whole block of land is initially owned under freehold tenure by the State, a private individual or a group of individuals.

Objects of the Flexible Land Tenure Act

- to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title;*
- to provide security of title for persons who live in informal settlements or who are provided with low income housing;*
- to empower the persons concerned economically by means of these rights.*

Section 2



2.2 Why is the new land tenure system “flexible”?

The system is called “flexible” because **it allows for upgrading from one kind of title to another**. A starter title can be upgraded to a land hold title or freehold title, and a land hold title can be upgraded to a freehold title.

The **starter title is a basic and inexpensive form of tenure**. It gives the holder rights over the *dwelling* at a specified location within a blockerf – but not full rights over the land on which the dwelling sits. Land rights held under a starter title cannot be used as a security for credit.

The **land hold title is a more advanced form of tenure**. It gives the holder the same rights over the *piece of land* in the blockerf that the owner of any freehold title of an erf would have, as well as the right to use *any common property* within the blockerf (such as the streets or a recreation area) – but the land has to remain part of the scheme on that blockerf. Land rights held under a land hold title can be used as a *security for credit*.

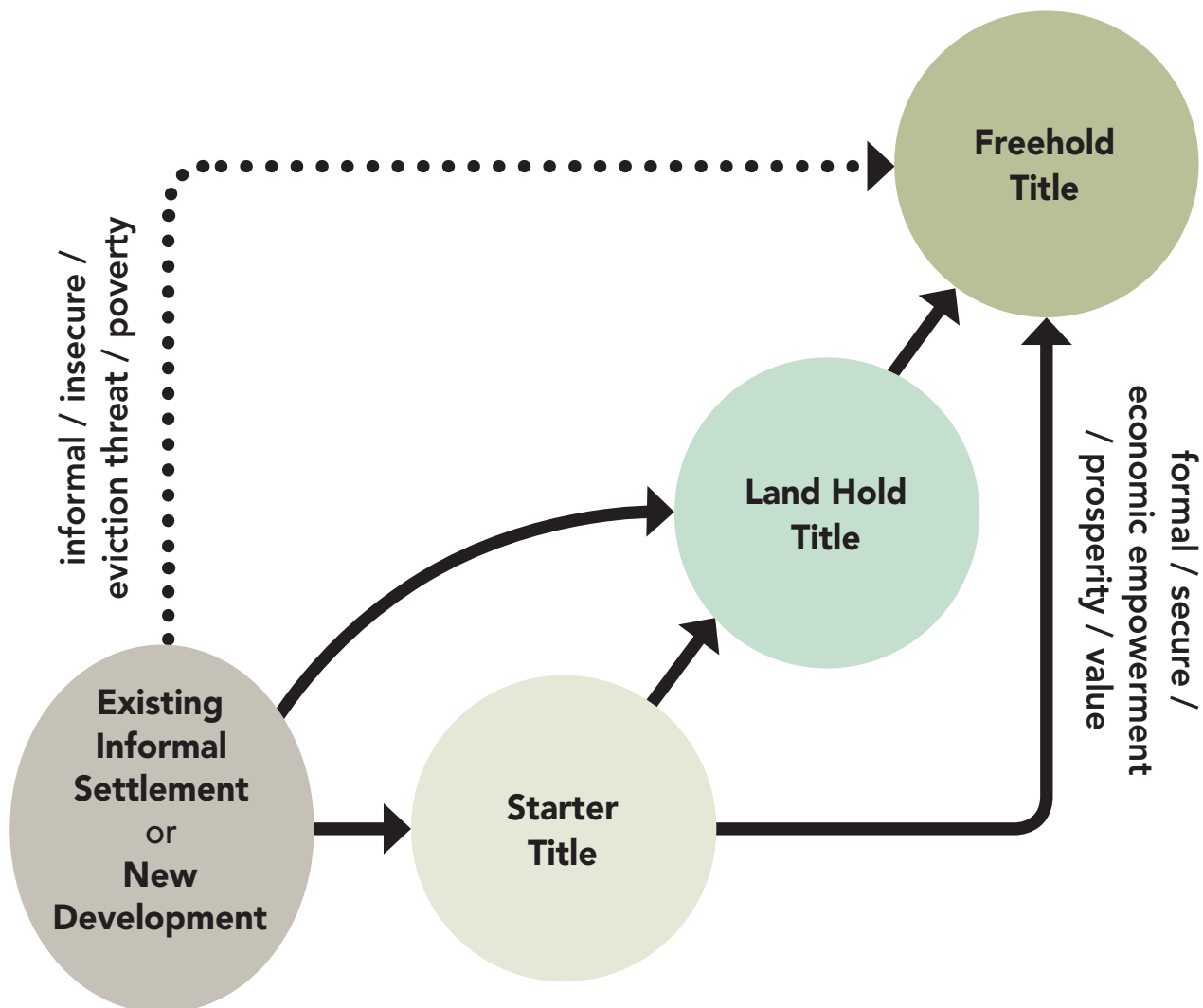
The **freehold title gives the holder full rights of ownership over the piece of land** in question.

REMEMBER!

There are certain limits to what holders of any title can do with their land in any local or regional authority. For example, there are rules about what land can be used for residential purposes and what land can be used for business purposes. There are rules about noise which can disturb neighbours and about protected trees which cannot be removed. Rules such as these apply to everyone who owns or rents or lives on land inside the local or regional authority.

THE FLEXIBLE LAND TENURE SYSTEM

Flexible Formalisation of Tenureship in Informal Settlements



2.3 How does the new land tenure system benefit low-income households?

Establishing new residential areas based on other forms of land title requires a number of steps under formal town planning schemes – including land surveying and registration which involves various professionals. These steps make land more expensive, and they add to the time involved in making new land available.

The Flexible Land Tenure Act creates new forms of land tenure which can be registered with fewer steps, in a new registration system which will run parallel to the existing one. This should help to lower the price of the new forms of land tenure. It should also make residential housing schemes quicker to set up.



Definitions

General terms

- “**Blockerf**” means a piece of land on which a starter title scheme or a land hold title scheme is established.
- “**Holder**” means the person who holds a starter title right or a land hold title right.
- “**Land Rights Office**” means the authority established under the Act where the registers are kept and maintained.

Starter title

- “**Starter title**” is a form of land tenure which gives the holder rights over the *dwelling* at a specified location within a blockerf – but not full rights over the land on which the dwelling sits.
- “**Starter title register**” means the register set up under the Act to record starter title rights.
- “**Starter title scheme**” means a scheme established in a specific blockerf which makes it possible for persons to get starter title rights within that blockerf.

Land hold title

- “**Land hold title**” is a form of land tenure which gives the holder the same rights over the piece of land in the blockerf that the owner of any freehold title of an erf would have, as well as the right to use any common property within the blockerf (such as a recreation area) – but the land has to remain part of the scheme on that blockerf.
- “**Land hold title register**” means the register set up under the Act to record land hold title rights.
- “**Land hold title scheme**” means a scheme established in a specific blockerf whereby persons may acquire land hold title rights over the plots which are part of that blockerf, after they are properly measured and identified.
- “**Common property**”, in respect of a land hold title scheme, means the part of the blockerf that does not form part of any individual plot.
- “**Plot**” means a piece of land forming part of the blockerf in a land hold title scheme, which can be held by a specific person who is the holder of a land hold title right.

Sections 1, 9 and 10

Government Gazette

The *Government Gazette* is mentioned several times in the Act. It is a government publication containing laws and other legal notices – which are valid only when they have been published in the *Government Gazette* where everyone can know about them. Several *Government Gazettes* are published every week. Anyone can subscribe to it (meaning that you can arrange to receive it regularly). You may also be able to access the *Government Gazettes* at large libraries or local law offices, or on the Parliament website.



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

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WINDHOEK - 13 June 2012

No. 4963

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 142

2012

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 2012: Flexible Land Tenure Act, 2012.

Government Gazette No. 4963, introducing the Flexible Land Tenure Act



Key Officials and Authorities

Relevant authority

The “relevant authority” decides whether a starter title scheme or a land hold title scheme will be established.

- For land situated in a municipality, town or village, the relevant authority is that municipality, town or village council.
- For land in a settlement area, the relevant authority is the regional council in the region where the land is located.

Sections 1 (definition of relevant authority), 12(1) and 13(1)

Deeds Registry

The Deeds Registry is not defined in the Flexible Land Tenure Act because it is already in place under the Deeds Registries Act. It is the office where freehold title is registered. Freehold title for land in Rehoboth is registered at the Deeds Registry in Rehoboth. Freehold title for land anywhere else in Namibia is registered at the Deeds Registry in Windhoek.

See Deeds Registries Act 47 of 1937 and
Registration of Deeds in Rehoboth Act 93 of 1976.
(Both of these statutes will be replaced by the
Deeds Registries Act 14 of 2015 once it comes into force.)

A “**deed**” is a legal document by which the right of ownership of land or other property is transferred to someone. To be enforceable by law, a deed must accurately describe the property, and must be signed in the presence of witnesses and then handed over (delivered) to the new owner.

Registrar of Deeds

This official is appointed by the Minister of Land Reform in terms of the Deeds Registries Act 14 of 2015. This is an existing official who registers freehold title, sectional title and leasehold title.

- The Registrar of Deeds in Windhoek *establishes* and *supervises* the starter title register and the land hold title register, but these registers are *maintained* by the Land Rights Registrar.
- The Registrar of Deeds has a duty to issue directives in order to ensure that the information contained in the registers established is as accurate as possible. The Registrar of Deeds can conduct inspections for this purpose, or ask someone else to carry out an inspection.
- The Registrar of Deeds makes endorsements on the title deeds of the blockerven concerned to the effect that a starter title or land hold title scheme has been established on these blockerven.

Sections 6(1) and (6), 12(3) and 13(3)

The Act (and this Guide) always refers to “**the Registrar of Deeds**” in full. A reference to “**the Registrar**” means the **Land Rights Registrar**.

Land Rights Office

A Land Rights Office takes care of the starter title register and the land hold title register.

There may be only a single national Land Rights Office, or there may be several regional Land Rights Offices. The Minister of Land Reform has the power to set up different Land Rights Offices for different geographical areas as needed – or to merge Land Rights Offices or close them down if they are no longer needed.

The area served by a Land Rights Office must be announced in a notice in the *Government Gazette*, and likewise any changes to Land Rights Offices.

Section 4

A Land Rights Office works under the supervision of a Land Rights Registrar appointed by the Minister. The Registrar may be assisted by registration officers and land measurers who are also appointed by the Minister. These persons are all employees in the public service.

A Land Rights Office may charge fees for its services. These fees must be set by the Minister in Regulations published in the *Government Gazette*.

Section 16(1)(a)

Land Rights Registrar

The Land Rights Registrar is responsible for the operation of the Land Rights Office.

The duties of the Land Rights Registrar are:

- to ensure that all the required information is recorded in the starter title and land hold title registers;
- to ensure that regular inspections of the starter title and land hold title schemes are carried out to make sure that the information recorded in the registers is correct;
- to help people who want to create a starter title scheme or a land hold title scheme;
- to help people who want to transfer their title to someone else; and
- on application, to issue an order to enforce any restrictive conditions imposed upon a starter title or land hold title scheme (section 17).

Sections 7 and 17

The Land Rights Registrar has these powers:

- to inspect a starter title scheme or a land hold scheme, in order to answer any question related to the performance of his or her duties;
- to inspect a land hold title scheme to confirm that the plot boundaries are recorded accurately in the register;
- to make enquiries or conduct interviews to answer any question related to the performance of his or her duties;
- to conduct formal hearings to resolve disputes; and
- to correct errors or omissions in the registers.

Section 8

The Land Rights Registrar can instruct registration officers or land measurers to assist with these duties and functions.

The Land Rights Registrar can also delegate any of his or her powers to a registration officer or land measurer, in general OR in connection with a specific group of duties or functions OR in connection with a specific matter.

Sections 7(2) and 8(4)-(6)

Remember that whenever the Act (or this Guide) simply refers to “**the Registrar**”, this means the **Land Rights Registrar**.

Acting Land Rights Registrar

If necessary, the Minister can appoint a registration officer to serve as Acting Registrar for as long as this is needed. For example, there could be a period when no Registrar has been appointed, or a period when the Registrar is ill or on leave. An Acting Registrar has all the powers and duties of a Registrar.

Section 5(3) & (4)

KEY OFFICIALS AND AUTHORITIES

WHO	RELEVANT AUTHORITY A Relevant Authority can be: Municipal Council Town Council Village Council OR Regional Council (for settlement areas)	REGISTRAR OF DEEDS	LAND RIGHTS REGISTRAR
WHERE	LOCAL AUTHORITY where blockerf is located	DEEDS REGISTRY (in Windhoek or Rehoboth)	LAND RIGHTS OFFICE (one central office or one of several offices in different parts of Namibia)
KEY FUNCTIONS	<p>Investigates the feasibility and desirability of creating a starter title or a land hold title scheme.</p> <p>Makes the decision on establishment of a starter title scheme or land hold title scheme.</p> <p>Provides services to the scheme.</p>	<p>Establishes and supervises the starter title register and the land hold register.</p> <p>Must issue directives and perform necessary inspections.</p> <p>Makes endorsements on the title deeds of the blockerven concerned to the effect that a starter title or land hold title scheme has been established on these blockerven.</p>	<p>In the case of land hold title schemes, prepares a land hold plan – which is a description of the plots – and demarcates the internal boundaries of all plots, streets and other public places.</p> <p>Enters information in the starter title register and the land hold title register.</p> <p>Files documents of record.</p> <p>Ensures assistance to persons with regard to starter titles or land hold titles.</p>



Starter Title Rights

5.1 Who can hold starter title rights?

A starter title can be **held by a single individual**, or **held jointly by a husband and wife who are married in community of property**.

- A starter title *cannot be held by a company, a close corporation, an NGO, a trust or any other group* – even if that group is a “legal person” which has the power to own other forms of land title.
- A starter title *cannot be held jointly by more than one person* – with the one exception of a husband and wife married in community of property.

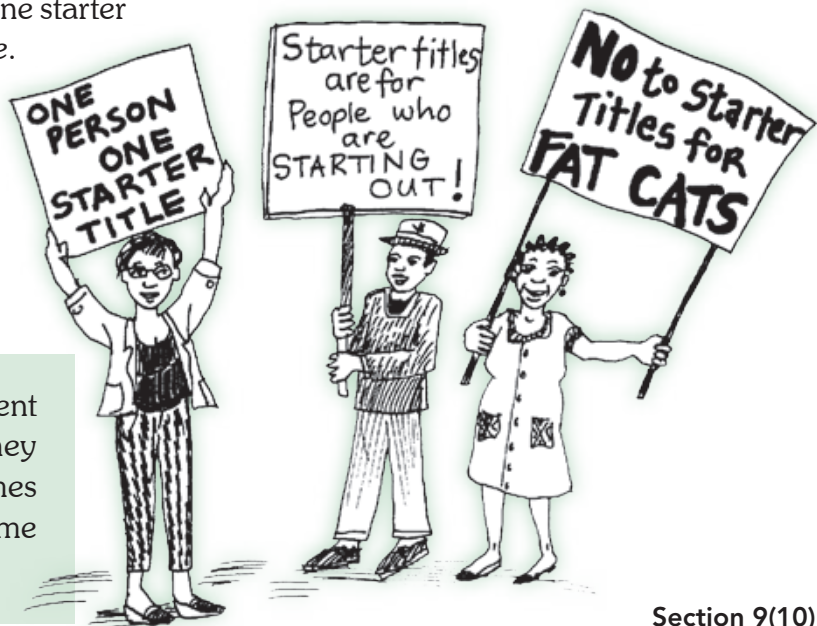


Section 9(8)-(9)

There are also **three other important rules**:

- 1) A person who already holds one starter title *cannot hold another one*.
- 2) A person who already holds a land hold title *cannot hold a starter title*.
- 3) A person who already owns land in Namibia *cannot have a starter title*.

These three rules help to prevent property speculation, and they ensure that starter title schemes benefit landless and low-income persons.



Section 9(10)

5.2 What are starter title rights?

If you are the holder of a starter title right, you can do any of the following:

- Build a house on the blockerf at a specified location of a specified size and nature.
- Live in your house on the blockerf for as long as you live.
- Leave the house to your heirs after your death.

This means that you may make a will leaving your house on the blockerf to any person you choose.

- Lease the home to another person.

This means that you may rent out your house to someone else.

- Transfer your right to another person who meets the qualifications for holding a starter title.

This means that you may give your starter title to someone else for free, sell your starter title to someone else or transfer the starter title to another person through any other transaction which is recognised by law. **But the person to whom the title is transferred must also be qualified to hold a starter title** – in other words, an individual (or a couple married in community of property) who does not already have any other starter title or land hold title, and does not already own any land through any other kind of title.

- Be a member of the association of the starter title scheme.
- Use services provided to the scheme.

For example, if the local authority agrees to provide water or electricity to every holder in your scheme for a certain price, you have the right to water or electricity services on those terms.

Section 9

The land rights held under a starter title cannot be used as a security for credit.

This means that the holder of the starter title cannot go to a bank and get a mortgage secured by that title.



ESTABLISHING A STARTER TITLE SCHEME

5.3 Who can apply to establish a starter title scheme?

An application to establish a starter title scheme may be submitted to the relevant authority by:

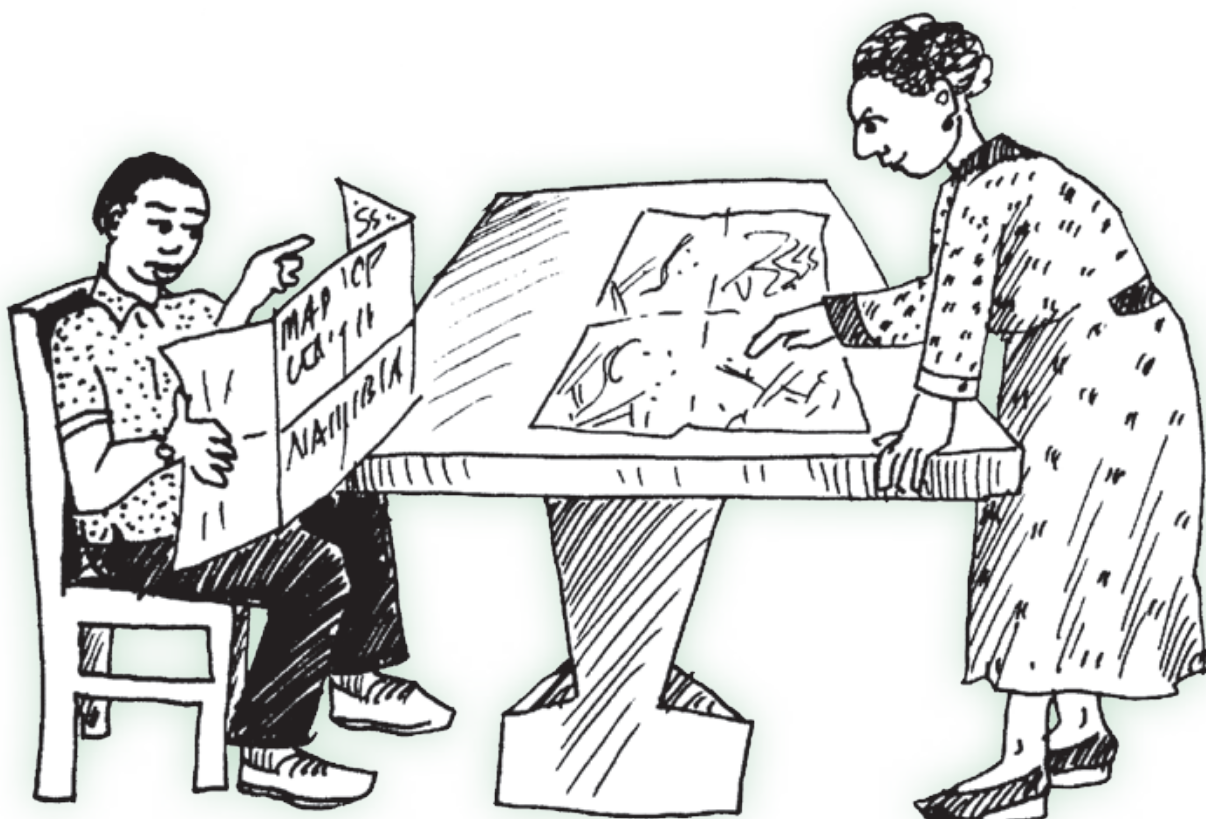
- the owner of the piece of land;
- someone who resides on the piece of land; or
- a group of people who reside on the piece of land.

The relevant authority may also decide to establish a starter title scheme on its own land, without receiving an application from anyone.

Section 11(1)

5.4 Preliminary requirements

- 1) A starter title scheme must be situated on a single piece of land registered in the Deeds Registry, which will be the blockerf. If the physical boundaries of the blockerf are not the same as the boundaries of the land in the Deeds Registry, the land must be subdivided (broken up) or consolidated (combined) so that the boundaries of the blockerf are the same as one single piece of land registered in the Deeds Registry.



- 2) There must not be any mortgage, usufruct, fideicommissum or similar right on the piece of land which will become the blockerf.

These are all rights that would limit the owner's powers over the land.

Where a **mortgage** from a bank is secured by a piece of land, the bank could take the land and sell it if the owner defaulted on the loan.

A **usufruct** is a right to use land owned by someone else. A usufruct can be granted for life, or for a specified time, or until some specific event takes place (such as until the person in question marries). The usufruct will always come to an end when the person who holds it dies.

A **fideicommissum** is when land has been bequeathed to one person (the "fiduciary") on the condition that when some specific event take place, or when some specified condition is fulfilled, the land must be passed to another person (the "fideicommissary"). For example, I might write a will leaving my land to my brother, on the condition that he makes a will leaving it to my daughter when he dies.

Rights such as these, which involve or affect third parties, must be cancelled before a starter title scheme is established.

- 3) The relevant authority must conduct a feasibility study to investigate whether it is possible and desirable to create the starter title scheme.

The feasibility study would look at practical issues which might affect the success of the scheme. For example, the feasibility study would look at things such as whether it would be possible to build the desired number of houses on the terrain in question, and whether it will be possible to provide access to all the houses. It might also look at issues such as the costs of providing basic services on the piece of land in question or the risk of seasonal flooding.

- 4) The relevant authority must have a list containing the names of the heads of households living on the blockerf at the time that the scheme is under consideration. If the relevant authority is considering a scheme on its own land, then it will compile this list. If someone else has applied to establish the scheme, that applicant must compile the list and provide it to the relevant authority.

This list is necessary because it must be submitted to the Registrar of Deeds and the Land Rights Registrar if the scheme is approved.

- 5) Every starter title scheme must have an association with a written constitution. Everyone who is seeking a starter title under the scheme should be a member of this association.

Associations are discussed in more detail in Chapter 10 of this Guide.

Sections 6(2)(c) and (4)(g), 11(2) and (6), 12(7)(b), (9) and (10)

5.5 Payments to cover the costs of establishing the scheme

The relevant authority may require payments to cover some or all of the costs of setting up the starter title scheme from:

- a) **the owner** of the blockerf;
- b) **an association formed by the people living on the blockerf**; and
- c) **the people living on the blockerf**.

If the money is to be paid by individual residents who live on the blockerf, they will enter into a contract with the relevant authority to pay the required amount in instalments.

Section 11(3)

5.6 What MAY the relevant authority do when deciding if a starter title scheme should be established?

When considering whether a starter title scheme should be established, the relevant authority may:

- inspect the blockerf;
- conduct a scientific study of the blockerf – *for example, it might conduct an environmental impact study, or a geological study to assess the possible impact of the land development on groundwater*;
- interview any person who can provide information relating to whether or not the starter title scheme should be established; or
- require the owner of the blockerf or the applicant to motivate the starter title scheme.

Section 11(7)

5.7 What MUST the relevant authority do when deciding if a starter title scheme should be established?

When considering whether a starter title scheme should be established, the relevant authority must:

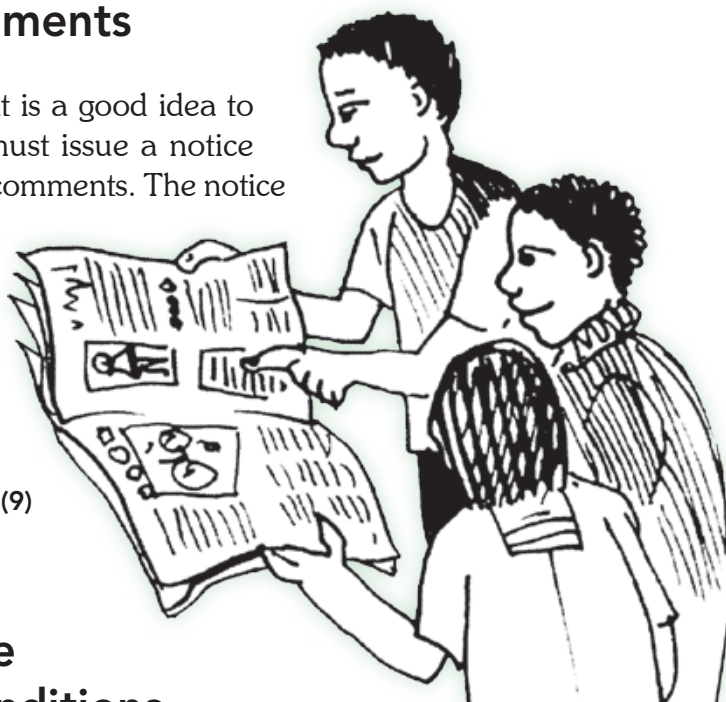
- consider all relevant legislation – *for example, in future it may become necessary to get an environmental clearance certificate under the Environmental Management Act if the Minister of Environment identifies starter title schemes as one of the activities that requires such certificates*;
- consider any town planning scheme applicable to the area of the blockerf; or
- consider the objects of the Flexible Land Tenure Act.

Section 11(7)(e) and 8

5.8 Call for public comments

If the relevant authority believes that it is a good idea to establish the starter title scheme, it must issue a notice inviting members of the public to give comments. The notice must be published in a newspaper circulating in the district where the blockerf is located. It must invite any person to give information relevant to the establishment of the scheme to the relevant authority.

Section 11(9)



5.9 Approval of the starter title scheme with or without conditions

If the relevant authority believes that establishing the starter title scheme is desirable after taking all the preliminary steps and considering the public input, then it will approve the establishment of the scheme.

Section 12(1)

The relevant authority may impose conditions on the starter title scheme:

- The relevant authority may limit **how many people** can hold starter title rights in the scheme.
- The relevant authority may specify the **type of buildings** that can be built on the blockerf.
- The relevant authority may impose rules about the laying of **pipes, conduits, wires, cables or sewers** on, under, or over the blockerf, for services to the blockerf or other purposes.

For example, the relevant authority might require that any water pipes used are of a certain standard to prevent leakages.

- The relevant authority may set conditions on the **consequences of late payments or failure to pay for services** provided by the relevant authority to the title holders on the blockerf.

For example, the relevant authority might make rules about the payment of damages, interest or penalties for late payment or non-payments.

- The relevant authority may also impose **any other conditions** that may be necessary or desirable.

For example, the relevant authority might require that a certain percentage of the title holders must be youth or women, in order to help the most disadvantaged groups in the community.

Section 12(6)

5.10 Relevant authority issues notice of approval

The relevant authority will then send a notice of its approval of the starter title scheme to the Registrar of Deeds and the relevant Land Rights Registrar. This notice must contain or be accompanied by the following information:

- The number of the title deed of the blockerf.
- Any conditions placed on the scheme by the relevant authority.
- A list containing the names of the heads of households that lived on the blockerf when the relevant authority was investigating whether or not establishing the scheme was desirable. The term “head of household” traditionally meant “man of the house”, when such an individual was present. However, the Flexible Land Tenure Act and the term “head of household” are both gender-neutral. This means that the head of household can be either a man or a woman, and men and women should be considered equal in determining who the head of household is. However, subject to the Married Persons Equality Act, 1996 (Act No. 1 of 1996), the registration of any starter title right includes the names of both spouses to a marriage in community of property.
- Any other information required by Regulations issued under the Flexible Land Tenure Act.
- Any other information that will help the Land Rights Registrar to determine who must be registered as the initial holders of starter title rights.

Section 12(7)

5.11 Parallel registration by Registrar of Deeds and Land Rights Registrar

a) **Endorsement on the title deed by Registrar of Deeds**

When the Registrar of Deeds receives the notice of approval, he or she makes an endorsement on the title deed of the blockerf stating that a starter title scheme has been established.

- The starter title scheme is legally established on the date that the endorsement is made.
- After the endorsement is made, the owner of the blockerf is not allowed to carry out any transactions involving the land – with the exception of any transactions which are necessary to finalise the scheme.

For example, there might be a need to arrange servitudes to give Nampower access to power lines.

Section 12(3)-(5)

b) **Registration in starter title register by Land Rights Registrar**

When the Land Rights Registrar receives the notice of approval, he or she enters the scheme in the starter title register, and determines who should be registered as the initial holders of starter title rights.

The heads of all households living on the blockerf when the relevant authority was investigating whether or not the scheme was desirable are entitled to be registered as the initial holders of starter title rights. Therefore, the Land Rights Registrar must determine the identity of those heads of households, and whether anyone else should be added to the list.

Sections 12(9)-(11)



The Land Rights Registrar will then enter the following information in the starter title register:

- The number of the title deed to the blockrf.
- A description of the blockrf.
The Regulations give directions on how this description must be written.
- The full name and identity number of every holder of starter title rights.
- The provisions of the constitution of the association of the scheme.
- Any conditions placed on the scheme by the relevant authority.
- Any other information required by the Regulations issued under the Flexible Land Tenure Act.

Sections 6(3) and 12(8)


5.12 Registrar issues Certificate of Starter Title Right to every starter title right holder

The Land Rights Registrar issues a document called a “Certificate of Starter Title Right” to everyone who is registered as the initial holder of a starter title right.

The Regulations give more detail about how this document is prepared and what information it must contain.

Section 12(12)

Sample of the "Certificate of Starter Title Right"



REPUBLIC OF NAMIBIA

LAND RIGHTS OFFICE OSHANA

CERTIFICATE OF STARTER TITLE RIGHT

Certificate No. **14/2017/26**

Starter Title Scheme **Sky Phase 5**

Oshakati

Issued in terms of section 12(12) of the Flexible Land Tenure Act, 2012 (Act No. 4 of 2012)

By virtue of the powers vested in me by section 12(12) of Act No. 4 of 2012, I, the Registrar at the Land Rights Office for the area of Oshana Region hereby certify that

JOHANNA KATUPOSE
Identity No. 8802200162

and

FESTUS TANGENI KATUPOSE
Identity No. 89122500368

Marital status: Married in community of property to each other

are truly and lawfully the holders of a starter title right in respect of the location identified by the distinctive serial number **26** situated at the **SKY PHASE 5** starter title scheme on the block/ described as:

- Certain: Erf No. 1769 – Township name: Extension No. 18
- Situated in Oshakati
- Oshana Region
- Measuring: 42,630 (forty-two thousand and six hundred and thirty) square meters
- Held under title deed No. T 559/2001

The starter title right held by the holders is

1. subject to or shall benefit by the rights contained in section 9(1) of the Act, namely:
 - a) to erect a dwelling on the block/ at the specified location of the specified site and nature;
 - b) to occupy the dwelling referred to in paragraph (a) in perpetuity;
 - c) on his or her death to bequeath the dwelling to his or her heirs and to


- d) lease to another person;
- e) subject to subsection (3) of section 9, to utilise such services as may be provided to the scheme as a whole by a local authority or any other person;
- f) to transfer his or her rights to any other person, (whether that person is the heir of the holder of that rights or whether the transfer is another transaction recognised by law); and
- g) to be a member of the association of the scheme concerned.

2. further subject to the following conditions imposed by the Oshakati Town Council (the relevant authority) in terms of section 12(6) of the Act, registered in the Land Rights Office under reference No. 44/2016, namely:

- Maximum height of any building on the block/ : 4.0 m
- It is prohibited
 - o to transfer the plot to another person unless the permission of the relevant authority had been obtained.

Signed and attested at Oshakati
on the 9th day of July 2016
and confirmed with my seal of office.

Land Rights Office at Oshakati


 (Land Rights Registrar)

Enforcement:

Page 1 of 2
Page 2 of 2



5.13 Transfer of starter title rights

Starter title rights may be transferred by agreement between the starter title right holder and any other person who meets the requirements for holding starter title. The person to whom the title is transferred must be an individual, or a couple married in community of property, who does not already have any other starter title or land hold title, and does not already own land through any other kind of title. A transfer agreement made with anyone who does not meet these requirements will be automatically invalid.

After the transfer, the dwelling must be occupied by the new starter title holder, or by someone assigned by him or her to occupy the dwelling.

The parties to the transfer must inform the Registrar of the transfer. The other starter title right holders in the scheme also have a duty to inform the Registrar of a transfer if the parties to the transfer fail to do so.

The Registrar must register the transfer of rights in the starter title register. The duty to register the transfer applies if the Registrar was informed of the transfer as the Act requires, or if the Registrar learns about the transfer in any other way (such as by an inspection of the scheme).

Registration of a transfer is treated as proof that the transaction occurred – unless someone shows evidence to the contrary.

Section 9(9)-(11)

5.14 Provision of services to a starter title scheme

The relevant authority or any other person may provide services to a starter title scheme as a whole. This means that if someone agrees to provide a service (such as water, electricity or rubbish removal) to a starter title scheme as a whole, they agree to provide that service to every holder in the scheme. The service provider chooses the conditions under which they provide services to the scheme.

The deed of the starter title scheme or the constitution which established the association of that scheme must determine the rights and duties of every starter title holder in the scheme in respect of the services provided. The deed or the constitution might also provide any starter title holder who does not fulfil his or her duties forfeits the right to the services provided to the scheme.

For example, the association's constitution might say that any starter title holder in the scheme who has not paid his or her electricity accounts for the last six months without a good reason will lose the right to have an electricity connection.

Section 9(2)-(3)

Land Hold Title Rights

6.1 Who can hold land hold title rights?

Anyone can hold land title rights. There are restrictions on who can hold starter title, but land hold title is available to anyone.

6.2 What are land hold title rights?

The holder of a land hold title right has the same rights in his or her plot that an owner has in respect of his or her erf under the common law, except where the Flexible Land Tenure Act specifically states otherwise. The holder has an undivided share in the common property of the block/erf concerned. If you are the holder of a land hold title, you can:

- hold the plot for as long as you live;
- transfer, bequeath or otherwise dispose of the plot; and
- secure a mortgage with the plot.

Section 10(1)(a)-(c)



ESTABLISHING A LAND HOLD TITLE SCHEME

6.3 Who can apply to establish a land hold title scheme?

An application to establish a land hold title scheme may be submitted to the relevant authority by:

- the owner of the piece of land;
- someone who resides on the piece of land; or
- a group of people who reside on the piece of land.

The relevant authority may also decide to establish a land hold title scheme on its own land, without receiving an application from anyone.

These rules are the same for starter title schemes and land hold schemes.

Section 11(1)

6.4 Preliminary requirements

All of the same preliminary requirements apply as for a starter title scheme, as well as some additional requirements.

- 1) A land hold title scheme must be situated on a single piece of land registered in the Deeds Registry, which will be the blockerf. If the physical boundaries of the blockerf are not the same as the boundaries of the land in the Deeds Registry, the land must be subdivided (broken up) or consolidated (combined) so that the boundaries of the blockerf are the same as one single piece of land registered in the Deeds Registry.

This requirement is the same for starter title and land hold schemes.

- 2) There must not be any mortgage, usufruct, fideicommissum or similar right on the piece of land which will form the blockerf.

These are all rights that would limit the owner's powers over the land.

Where a **mortgage** from a bank is secured by a piece of land, the bank could take the land and sell it if the owner defaulted on the loan.

A **usufruct** is a right to use land owned by someone else. A usufruct can be granted for life, or for a specified time, or until some specific event takes place (such as until the person in question marries). The usufruct will always come to an end when the person who holds it dies.

A **fideicommissum** is when land has been bequeathed to one person (the “fiduciary”) on the condition that when some specific event take place, or when some specified condition is fulfilled, the land must be passed to another person (the “fideicommissary”). For example, I might write a will leaving my land to my brother, on the condition that he makes a will leaving it to my daughter when he dies.

Rights such as these, which involve or affect third parties, must be cancelled before a starter title scheme is established.

This requirement is the same for starter title and land hold schemes.

- 3) The relevant authority must conduct a feasibility study to investigate whether it is possible and desirable to create the land hold title scheme.

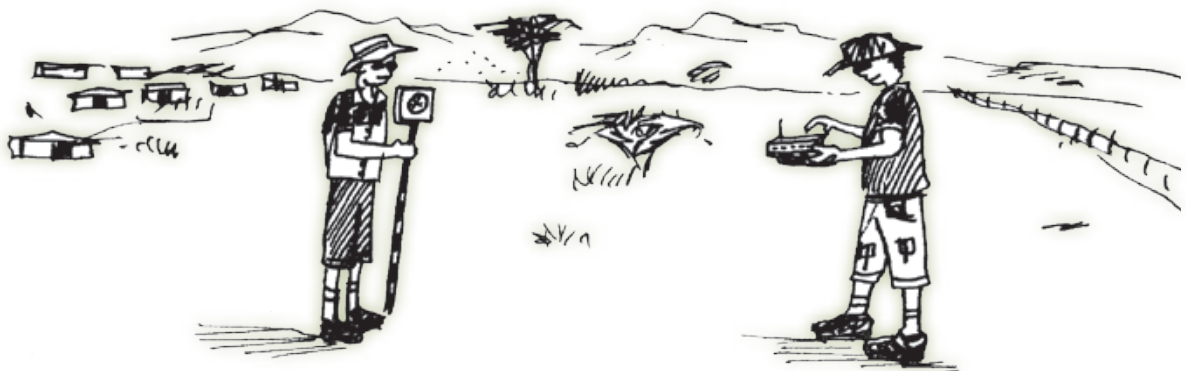
The feasibility study would look at practical issues which might affect the success of the scheme. For example, the feasibility study would look at things such as whether it would be possible to build the desired number of houses on the terrain question, and on whether it will be possible to provide access to all the houses. It might also look at issues such as the costs of providing basic services on the piece of land in question or the risk of seasonal flooding.

This requirement is the same for starter title and land hold schemes.

- 4) One or more **land measurers** must **measure** the plots of the intended scheme, **indicate the physical boundaries** on the blockerf and **prepare a description** of the plots which gives the physical boundaries and allocates plot numbers. The description of plots is called a **land hold plan**.

The Regulations issued under the Flexible Land Tenure Act describe the way that the plots must be measured, marked and described.

This requirement applies only to land hold schemes.



- 5) The applicant must prepare a **list of persons with whom contracts have been concluded for the transfer of plots** upon the establishment of the scheme, together with the number of the plot that must be transferred. The applicant must submit this list to the relevant authority. If there was no applicant and the relevant authority initiated the proposal for the land hold scheme itself, the relevant authority must prepare the list.

This requirement applies only to land hold schemes, although there is a similar requirement for starter title schemes. In the case of starter title schemes, the relevant authority must have a list containing the names of the heads of households living on the blockerf at the time that the scheme is under consideration.

- 6) Every land hold title scheme must have an association with a written constitution. Every person seeking a land hold title under the scheme must be a member of this association.

Associations are discussed in more detail in Chapter 10 of this Guide.

This requirement for an association is the same for starter and land hold title schemes.

Section 11(2) and (4)-(6)

6.5 Payments to cover the costs of establishing the scheme

The relevant authority may require payments to cover some or all of the costs of setting up the land hold title scheme from:

- a) **the owner** of the blockerf;
- b) **an association formed by the people living on the blockerf**; and
- c) **the people living on the blockerf**.

If the money is to be paid by individual residents who live on the blockerf, they will enter into a contract with the relevant authority to pay the required amount in instalments.

These rules on payments are the same for starter title schemes and land hold title schemes.

Section 11(3)

6.6 Limitations on other payments

Only the government or the relevant authority may receive or request money in exchange for transferring a land hold title plot before a land hold title scheme has been established.

It is an offence for anyone else to receive or request money in exchange for transferring a land hold title plot before a scheme has been established. The penalty is a fine of up to N\$15 000, a prison sentence of up to three years, or both.

Even though people are not allowed to receive or request money for transfer of a plot before a scheme has been established, someone who is going to transfer a plot once a scheme is established can ask the person who will receive the plot to pay a deposit to a legal practitioner. The legal practitioner will hold the money in a trust account to keep it safe until the scheme has been established.

- If the land hold title scheme is approved and established, the legal practitioner will give the deposit to the person who is transferring the plots.
- If the land hold title scheme is *not* established, the legal practitioner will give the money back to the person who deposited it.

These rules on payments apply only to land hold title schemes. They are intended to help prevent fraud.

Section 13(13)-(15)



6.7 What MAY the relevant authority do when deciding if a land hold title scheme should be established?

When considering whether a starter title scheme should be established, the relevant authority may:

- inspect the blockerf;
- conduct a scientific study of the blockerf – *for example, it might conduct an environmental impact study, or a geological study to assess the possible impact of the land development on groundwater;*
- interview any person who can provide information relating to whether or not the land hold title scheme should be established; or
- require the owner of the blockerf or the applicant to motivate the land hold title scheme.

Section 11(7)

The list of what the relevant authority MAY do is the same for starter title schemes and land hold title schemes.

6.8 What MUST the relevant authority do when deciding if a land hold title scheme should be established?

When considering whether a land hold title scheme should be established, the relevant authority must:

- consider all relevant legislation – *for example, in future it may become necessary to get an environmental clearance certificate under the Environmental Management Act if the Minister of Environment identifies land hold title schemes as one of the activities that requires such certificates;*
- consider any town planning scheme applicable to the area of the blockerf; and
- consider the objects of the Flexible Land Tenure Act.

The list of what the relevant authority MUST do is the same for starter title schemes and land hold title schemes.

Section 11(7)(e) and 8

6.9 Call for public comments

If the relevant authority believes that it is a good idea to establish the land hold title scheme, it must issue a notice inviting members of the public to give comments. The notice must be published in a newspaper circulating in the district where the blockerf is located. It must invite any person to give information relevant to the establishment of the scheme to the relevant authority.

The rules on public announcements and comments are the same for starter title schemes and land hold title schemes.

Section 11(9)

6.10 Approval of the land hold title scheme with or without conditions

If the relevant authority believes that establishing the land hold title scheme is desirable after taking all the preliminary steps and considering the public input, then it will approve the establishment of the scheme.

Section 13(1)

The relevant authority may impose conditions on the land hold title scheme in general, or it may impose different conditions on different plots within a scheme:

- The relevant authority may make rules about the **kinds of buildings or other structures that may be erected** on the various plots.
These conditions could, for example, specify the distances between buildings and plot boundaries. The conditions could set a maximum height for any building or structure that may be erected on the plots. The conditions could also cover other issues concerning buildings and structures on the plots.
- The relevant authority may impose rules about the **laying of pipes, conduits, wires, cables or sewers** on, under or over the blockerf, for services to the blockerf or other purposes.
For example, the relevant authority might require that any water pipes used are of a certain standard to prevent leakages.
- The relevant authority may impose **rules limiting the transfer of the plot to another person**.
For example, it can prohibit transfers for a specified period after the land hold title was acquired. It can require that transfers can take place only with the permission of the relevant authority. It can allow transfers only where some other specified condition has been fulfilled.
- The relevant authority may also impose **any other conditions** that may be necessary or desirable.
For example, the relevant authority might require that a certain percentage of the title holders must be youth or women, in order to help the most disadvantaged groups in the community.

The relevant authority's option of imposing conditions is different for starter title schemes and land hold title schemes.

Section 13(6)

6.11 Relevant authority issues notice of approval

After the relevant authority approves the land hold title scheme, it will send a notice of its approval to the Registrar of Deeds and the relevant Land Rights Registrar.

This notice must contain or be accompanied by the following information:

- the number of the title deed of the block;f;
- any conditions placed on the scheme by the relevant authority;
- the description of the physical boundaries and the numbers of the plots in the scheme prepared by the land measurer;
- the list of persons who have entered into contracts for the transfer of plots upon the establishment of the scheme, together with the plot numbers to be transferred to each person on the list;
- any other information required by Regulations issued under the Flexible Land Tenure Act; and
- any other information that the relevant authority decides is necessary to include.

The list of what must be submitted in the notice of approval for land hold title schemes is similar but not identical to the list that applies to a notice of approval for starter title schemes.

Section 13(8)

6.12 Parallel registration by Registrar of Deeds and Land Rights Registrar

a) **Endorsement on the title deed by Registrar of Deeds**

When the Registrar of Deeds receives the notice of approval, he or she makes an endorsement on the title deed of the block;f stating that a land hold title scheme has been established.

- The land hold title scheme is legally established on the date that the endorsement is made.
- After the endorsement is made, the owner of the block;f is not allowed to carry out any transactions involving the land – with the exception of any transactions which are necessary to finalise the scheme.

For example, there might be a need to arrange servitudes to give Nampower access to power lines. (The term “servitude” is defined in section 6.15 of this Guide.)

Section 13(3)-(5)

b) **Registration in land hold title register by Land Rights Registrar**

When the Land Rights Registrar receives the notice of approval, he or she enters the scheme in the land hold title register, following any regulations about how to record this information.

Section 13(9)

The Land Rights Registrar will then enter the following information in the land hold title register:

- The number of the title deed to the blockerf.
- A description of the blockerf.

The Regulations give directions on how this description must be written.

- Information about each plot which is clear enough to identify the physical boundaries of each plot.

The Regulations give more detail about what information must be recorded in respect of each plot.

- Any conditions placed on the scheme by the relevant authority.
- The full names and identity numbers of the holders of land hold title rights in that scheme.
- Details of all land hold title transactions that must be registered in the land hold title register (transfers, mortgages and other debts which could be executed against a plot in the scheme, rights of way and servitudes).

These transactions are discussed in section 6.16 of this Guide. The Regulations give more detail about what information must be recorded in respect of each such transaction.

- Particulars of the holder of any real rights registered against the plot concerned, as well as all the terms and conditions relating to those rights.

The Regulations give more detail.

- The provisions of the constitution of the association of the scheme.
- Any other information required by the Regulations issued under the Flexible Land Tenure Act.

Sections 6(4) and 13(9)

6.13 Registrar issues Certificate of Land Hold Title Right to every land hold title right holder

The land hold titles become effective as soon as the required information about the scheme is entered into the land hold title register. The Land Rights Registrar issues a document called a “Certificate of Land Hold Title Right” to every person who is registered as a holder of land hold rights.

The Regulations give more detail about how this document is prepared and what information it must contain.

Sections 13(9), (10) and (12)

6.14 Common property and unassigned plots

Every land hold title holder in the scheme has the same rights to the common property in the scheme. This does not change even if some of the plots covered by land hold titles are different sizes.

The blockerf owner will be the holder of any plots in the scheme that are not assigned to persons on the list of concluded contracts.

Sections 10(2) and 13(11)

6.15 Impact of servitudes or rights of way

A servitude is a legal right which gives a particular person or anyone who is the owner of a certain piece of land a specific right to use another person's piece of land – such as a right of access over the land in question, or the right to lay water pipes or power lines over the land in question. Servitudes affecting the block erf apply to the plots in the land hold scheme on that block erf.

- If there is a **servitude over the block erf or a plot in favour of some other property**, that servitude applies to any plot which is affected.

For example, suppose that there is a servitude giving Nampower a right to access to a power line on the block erf. Any land hold rights holder on the block erf would have to allow and respect that same right of access. As another example, if the owner of the property next to the block erf has a right of way permitting them to drive over a portion of the block erf, then the holder of any plot which the right of way goes over cannot put up a fence to stop the neighbouring owner from driving over the right of way.

- If there is a **servitude over some other property in favour of the block erf**, that servitude can be exercised by every holder of land hold rights on the block erf.

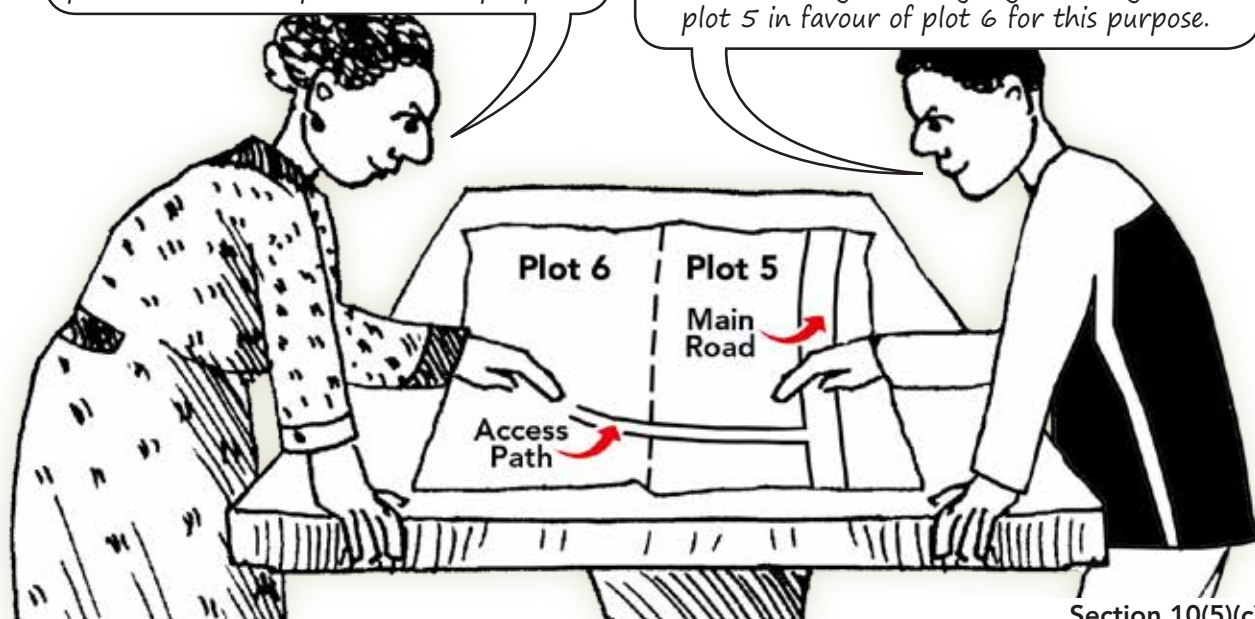
For example, suppose that there is a servitude giving the owner of the block erf a right of access to the block erf over a road that crosses a neighbouring property. All of the land hold rights holders would also be able to use that road to reach their plots on the block erf.

Sections 10(3), (4) and (5)(d)

Impact of rights of way relating to individual plots

I own plot 6. Anyone who owns plot 6 has a right of access over plot 5. This is because a right of way is registered against plot 5 in favour of plot 6 for this purpose.

I own plot 5. Anyone who owns plot 5 must allow anyone who owns plot 6 to walk or drive on the path through my plot. This is because there is a right of way registered against plot 5 in favour of plot 6 for this purpose.



Section 10(5)(c)

6.16 Transactions that must be registered in the land hold title register

Certain transactions relating to land hold title rights may take place only if they are registered in the land hold title register. These transactions become effective on the date that they are registered in the land hold title register:

- transferring land hold title rights to another person;
- creating or cancelling a mortgage for a debt secured by a plot covered by a land hold title;
- creating or cancelling any other form of security for a debt which can be executed against a plot covered by a land hold title;
- creating or cancelling a right of way in favour of another holder of rights in the same scheme;
- creating or cancelling servitudes relating to the provision of water, electricity, telecommunications or any similar service or removal of sewerage from any plot.

As explained in section 6.15, a servitude is a legal right which gives a particular person or anyone who is the owner of a certain piece of land a specific right to use another person's piece of land. A right of way is a form of servitude for purposes of access. It can be a general right of access over a piece of land, or a right of access along a specifically identified route.

Failing to register one of these types of transactions has the same consequences as failing to register a similar transaction in the Deeds Registry. Similarly, registering any transaction in the land hold title register has the same legal effect as registering a similar transaction in the Deeds Registry.

If the transaction is not properly registered, it cannot be relied upon or enforced against others. If it is properly registered, then it can be protected.

Section 10(5), (7) and (8)

6.17 Limits on certain restrictions and encumbrances of plots held under land hold title

There are some limits on transactions involving plots covered by land hold title:

- No servitudes can be registered against the plot other than a right of way in favour of another holder of rights in the same scheme, or a servitude for the provision of water, electricity, telecommunications or any similar service or the removal of sewerage.
- No restrictive condition can be registered against the plot other than one imposed by the relevant authority as a condition of approving the land hold title scheme.
- No long-term lease may be registered against the plot.
- No other real right may be registered against the plot.

Section 10(6)

Note that a holder of land hold title **CAN pledge his or her rights in that land as security for a mortgage.**





Enforcing Conditions Placed on Starter Title and Land Hold Title Schemes

As explained in previous chapters of this Guide, a relevant authority may impose conditions upon a starter or land hold title scheme as a whole. Different conditions may be imposed on different plots in a land hold title scheme.

Step 1: Application for order of enforcement

The following persons and bodies can submit an application to the Land Rights Registrar requesting an order enforcing a restrictive condition:

- the relevant authority;
- the scheme's association; or
- any person having a substantive interest in the enforcement of the condition.

The Regulations explain the form of this application and how it must be submitted.

Step 2: Hearing

The Land Rights Registrar conducts a hearing to decide whether or not the rights holder has complied with the condition or conditions in question.

The Regulations give a time frame for this hearing.

Step 3: Order of enforcement

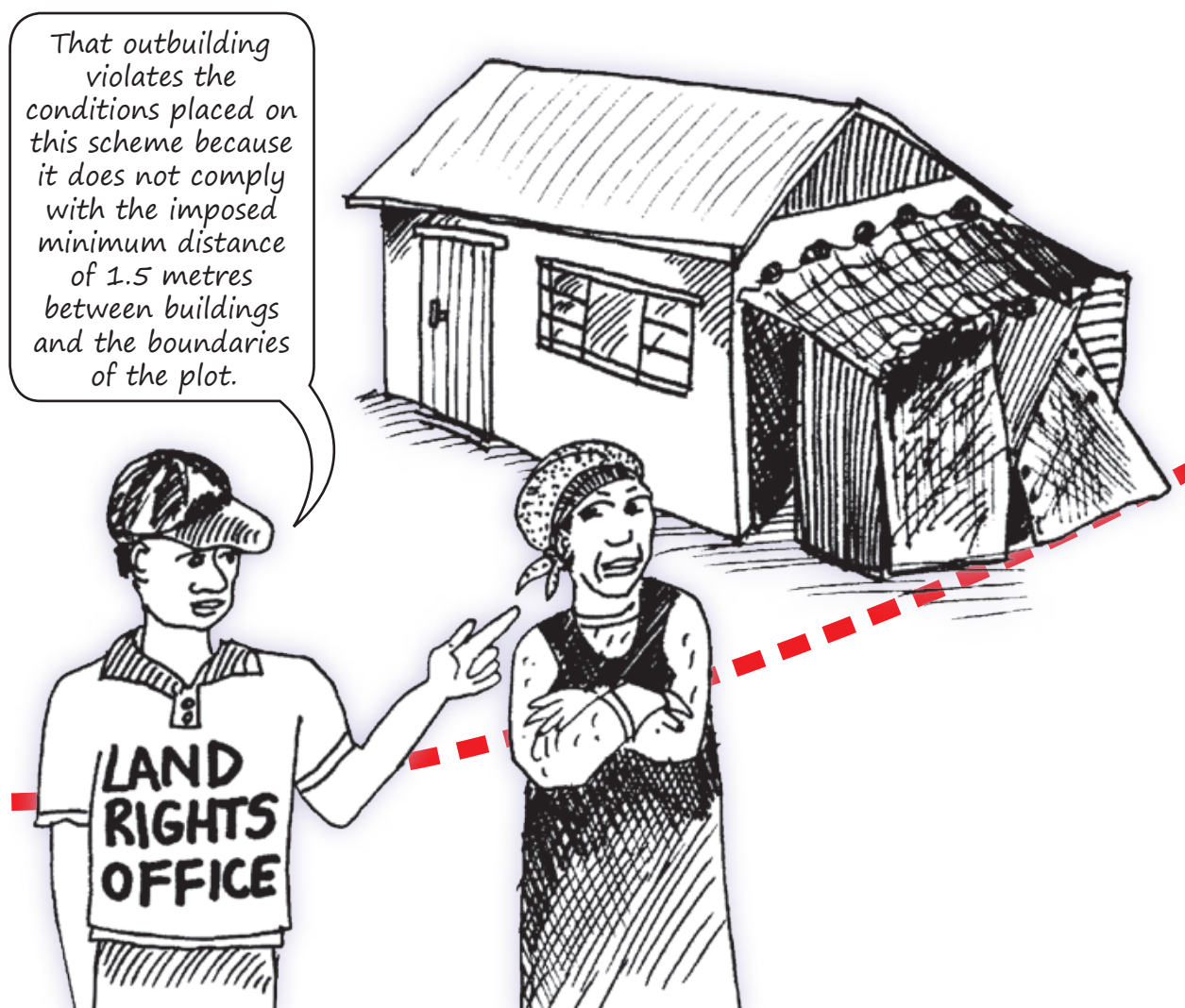
If the Land Rights Registrar finds that a condition has been violated, the Registrar will order the person in question to comply with the condition within a certain period of time.

- The Land Rights Registrar decides how long the person has to comply with the conditions, but the period specified must be reasonable in all circumstances.
- Failing to follow an enforcement order from the Land Rights Registrar is an offence. The punishment can be a fine of up to N\$5 000. If the title holder does not pay the fine, then he or she could go to prison for up to one year, or might have to pay a N\$5 000 fine AND go to prison for up to one year.

Step 4: Erection, alteration or demolition of structure

If the order of enforcement requires the erection, alteration or demolition of a structure, and the title holder has not done the work, the relevant authority can do the work at the cost of the title holder.

Section 17



Upgrading Starter Title Scheme to Land Hold Title Scheme

8.1 What is the procedure for upgrading?

Step 1: Application for upgrading

If 75% or more of the rights holders in the scheme consent to upgrading the scheme, then the association of rights holders may submit an application to the relevant authority to upgrade the scheme.

The Regulations explain the form of this application and the procedure for submitting it. The association must keep correct records of the decision-making process, including minutes of its Annual General Meeting and other meetings, to prove that the proper consent was obtained.



Step 2: Consideration and establishment

The same steps must be followed to upgrade a starter title scheme to a land hold title scheme as the steps that are followed when establishing a land hold title scheme.

When the plots of the proposed land hold title scheme are measured, marked and listed with the title holders' names, each holder's plot must correspond as closely as possible to the piece of ground actually occupied by that person.

8.2 Are there any costs associated with upgrading to land hold title?

The relevant authority can require all of the rights holders in the starter title scheme to deposit a sum of money with the relevant authority. This money can be used by the relevant authority to pay some of the expenses of upgrading the starter title scheme to a land hold title scheme.

8.3 What happens if some of the rights holders do not want to upgrade?

The relevant authority will grant starter title rights in a similar starter title scheme to those rights holders in an upgraded scheme who did not want to upgrade from starter title to land hold title.

The relevant authority can then sell the plots in the upgraded land hold title scheme that would have been allocated to the people who were granted alternative starter titles rights. The money received for the land hold plots belongs to the relevant authority.

Section 14



Upgrading Starter Title or Land Hold Title to Freehold Title

9.1 What schemes can be upgraded to freehold title?

The following requirements must be met before a starter title scheme or a land hold title scheme can be upgraded to full ownership:

- The scheme must be located within an approved township.
An approved township is an area identified for urban development under the Townships and Division of Land Ordinance 11 of 1963.
- The block must be surveyed and subdivided in accordance with the laws relating to the surveying and subdivision of land in Namibia.

These laws would include (at the time of writing) the Town Planning Ordinance 18 of 1954, the Townships and Division of Land Ordinance 11 of 1963, the Land Survey Act 33 of 1993 and possibly the Sectional Titles Act 2 of 2009.



- All of the title holders in the scheme must agree in writing to upgrade to full ownership. Alternatively, if at least 75% of the title holders in the scheme agree to upgrade to full ownership, then the relevant authority can pay fair compensation to the title holders who do not want to upgrade. The relevant authority can then sell the erven that would have been allocated to the holders who did not want to upgrade. The money from the sales belongs to the relevant authority.

Fair compensation is likely to be the market value of the erven that the rights holder is giving up.

9.2 What costs are associated with upgrading to freehold title?

Each holder in the scheme pays the costs of upgrading in the same proportion as the surface area of their plot or piece of land compared to the total surface area of the scheme.

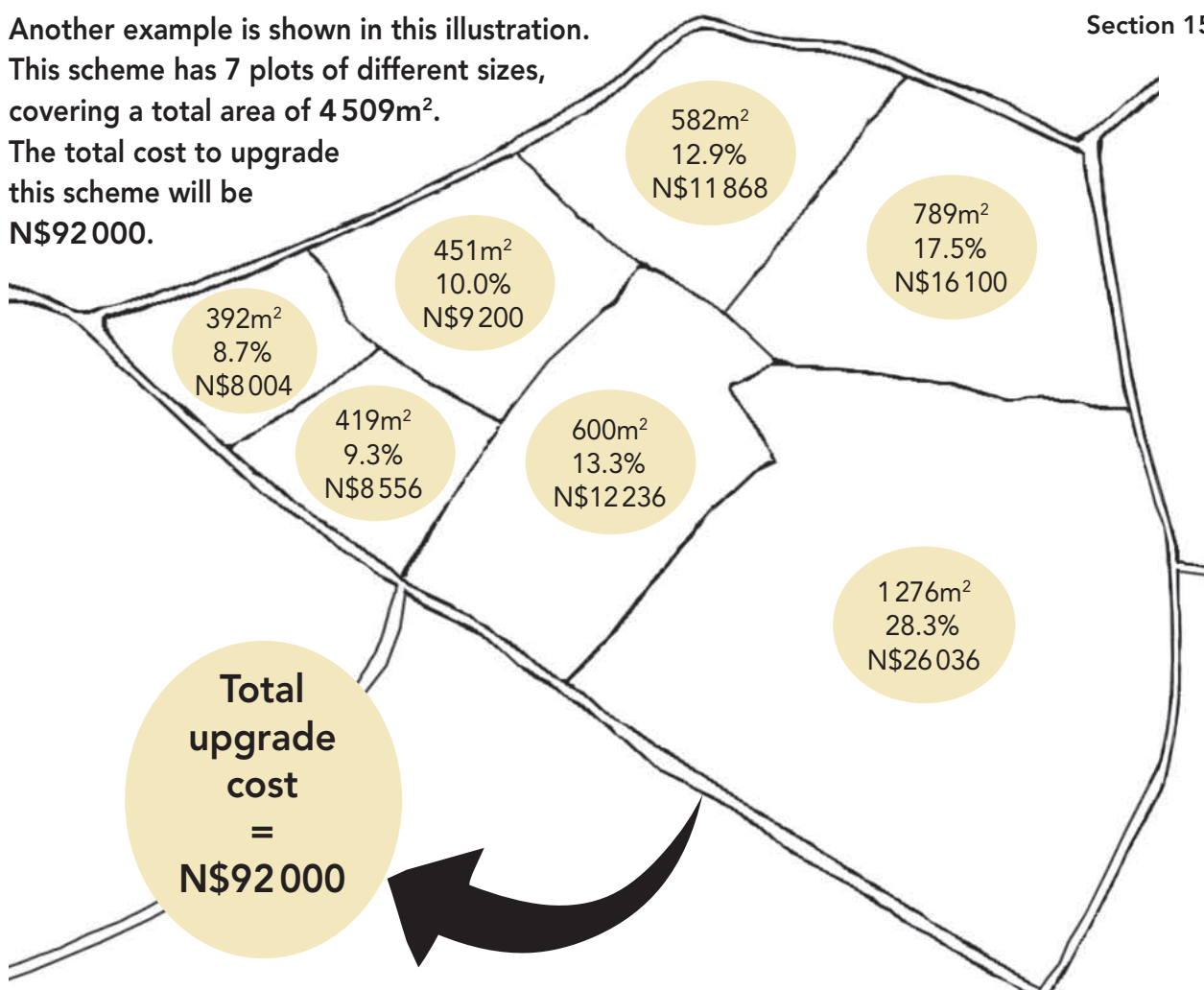
For example, if you hold a plot that makes up 10% of the total land area of the scheme, and the cost of upgrading the scheme was N\$80 000, then you must pay 10% of N\$80 000. Therefore, you must pay N\$8 000 of the costs of upgrading to full ownership.

Another example is shown in this illustration.

This scheme has 7 plots of different sizes, covering a total area of 4 509m².

The total cost to upgrade this scheme will be N\$92 000.

Section 15



Associations

10.1 What does the association of a starter title scheme do?

Every starter title scheme and land hold title scheme must have an association. The functions of an association of a starter title scheme are:

- to mediate disputes between members of the scheme; and
- to represent the title holders in negotiations with the relevant authority.

Section 9(12)



10.2 What does the association of a land hold title scheme do?

The functions of an association of a land hold title scheme are:

- to manage the common property of the scheme; and
- to represent the title holders in negotiations with the relevant authority.

Section 10(9)

10.3 The constitution of the association

Every association must have a constitution.

The Regulations contain a model constitution for associations. The constitution of the association should specify –

- how the annual general meeting or a special general meeting can be called;
- procedure and voting at annual general meetings or special general meetings; and
- the composition of the committee of the association.

10.4 Meetings of the association

The association must hold an annual general meeting. It may hold special general meetings for specific purposes.

10.5 The committee of the association

The association is managed by a committee.

- The Regulations specify how an election of the association's committee must be conducted.

In a starter title scheme, every holder of rights in the scheme has one vote.

In a land hold title scheme, a person has one vote for every plot that they hold.

- The committee is elected for a term of office of one year.

If the constitution has a provision that allows the committee to be dismissed by a general meeting of the association, then the committee may hold office for less than one year.

- In a committee meeting, decisions are made by a majority of the members present.

If there is an equal number of votes, the person who presides at that meeting has a casting vote (in addition to his or her deliberative vote).



Section 17



Disputes, Appeals and Reviews

11.1 Disputes

Any party involved in a dispute on a matter relating to the duties of the Registrar can ask the Registrar to hold a hearing. Or, the Registrar can decide that a hearing is needed to resolve such dispute, even if the parties in conflict have not requested this. The Land Rights Registrar can summon any person to give evidence or submit an affidavit at a formal hearing. It is an offence to ignore a summons or instruction from the Registrar to submit an affidavit. On conviction, a violator may be fined up to N\$4 000 or go to prison for up to one year, or may have to pay the fine and go to prison.

Section 8(1)-(3)

11.2 Appeals

Any person who has a substantial interest in a decision made by a Land Rights Registrar may appeal to the magistrates' court of the district in which the relevant scheme is located.

The Regulations describe the procedure for making appeals.

Section 19

11.3 Review of decision of relevant authority

The person or group seeking to establish a starter title scheme or land hold title scheme, or the residents who are affected, might be unhappy if the relevant authority decides not to approve the scheme. Or, a member of the public might be unhappy if the relevant authority approves the scheme. It is also possible that any of these people might be unhappy with the relevant authority's decision to impose or not impose certain conditions. The Act does not provide for an appeal of the relevant authority's decision. However, like any other administrative decision, the relevant authority's decision is subject to review by a court. A person who was not happy with the decision could ask the relevant authority for written reasons for the decision, and then ask the High Court to review the decision. The High Court would examine the decision to see:

- (a) if the correct procedures were all followed; and
- (b) if the relevant authority genuinely considered all issues that it was required to consider.

Steps to Establish a

1	Application	The landowner, or one or more persons living on the land, applies to set up a starter title scheme OR the relevant authority decides to set up a scheme on its own land.
2	Boundary check	The boundaries of the block must match the boundaries of a single piece of land as it is registered at the Deeds Office.
3	Unencumbered land	The relevant authority makes sure that no one else has any legal rights to the land which might limit its use for a starter title scheme.
4	Feasibility study	The relevant authority must carry out a study to see if the scheme is a good idea.
5	List of heads of households	The relevant authority must have a list of the heads of households residing on the land in question at the time that the starter title scheme is being considered, because this list must be submitted to the Registrar of Deeds and the Land Rights Registrar if the scheme is approved.
6	Forming an association	Every starter title scheme must have an association consisting of the persons who will be holders of the title rights in the scheme.
7	Payments	The relevant authority may decide to ask for payments from the owner of the land or the residents, to cover some or all of the costs of setting up the scheme.

Starter Title Scheme

8	Consideration of scheme's desirability	The relevant authority can also carry out other inspections, interviews and studies as necessary to help it make an informed decision on the scheme. It must also consider other relevant laws, the relevant town planning scheme and whether the scheme is in line with the objectives of the Flexible Land Tenure Act.
9	Invitation for public comment	If the relevant authority thinks that the scheme may be a good idea after these steps have been taken, then there must be a public announcement of the proposed scheme in a locally-distributed newspaper and an invitation for public comment.

APPROVAL OF THE SCHEME WITH OR WITHOUT CONDITIONS

10	Notice to Registrar of Deeds and Land Rights Registrar	The relevant authority will send a notice of its approval of the starter title scheme to the Registrar of Deeds and the relevant Land Rights Registrar. This notice will include a list of the heads of the households living on the block/erf at the time the scheme was under consideration, and a list of all the conditions imposed by the relevant authority.
11	Parallel registration	The Registrar of Deeds will make an endorsement on the title deed of the block/erf stating that a starter title scheme has been established, and the Land Rights Registrar will enter the scheme in the starter title register and register the details of the initial holders of starter title rights in the scheme.
12	Registrar issues a Certificate of Starter Title Right to every starter title right holder.	

Steps to Establish a Land Hold Title Scheme

1	Application	The landowner, or one or more persons living on the land, applies to set up a land hold title scheme OR the relevant authority decides to set up a scheme on its own land.
2	Boundary check	The boundaries of the block must match the boundaries of a single piece of land as it is registered at the Deeds Office.
3	Unencumbered land	The relevant authority makes sure that no one else has any legal rights to the land which might limit its use for a land hold title scheme.
4	Feasibility study	The relevant authority must carry out a study to see if the scheme is a good idea.
5	Measurement and description of plots by land measurer	This is a simpler version of a land survey, carried out by a land measurer rather than a land surveyor. The land measurer must prepare a description of the plot boundaries and numbers, and demarcate the internal boundaries of all plots, streets and other public places.
6	List of persons who have concluded contracts for land hold title in the scheme	The relevant authority must have a list of persons with whom contracts have been concluded for the transfer of plots upon the establishment of the scheme, together with the relevant plot numbers.
7	Forming an association	Every land hold title scheme must have an association consisting of the persons who will be holders of the title rights in the scheme.
8	Payments	The relevant authority may ask for payments from the owner of the land or the residents to apply towards the costs of setting up the scheme. However, no one other than the government or the relevant authority may request or receive money for a land hold title plot before the land hold title scheme has been established.

and Hold Title Scheme

9	Consideration of scheme's desirability	The relevant authority can also carry out other inspections, interviews and studies as necessary to help it make an informed decision on the scheme. It must also consider other relevant laws, the relevant town planning scheme and whether the scheme is in line with the objectives of the Flexible Land Tenure Act.
10	Invitation for public comment	If the relevant authority thinks that the scheme might be a good idea after these steps have been taken, then there must be a public announcement of the proposed scheme in a locally-distributed newspaper and an invitation for public comment.

APPROVAL OF THE SCHEME WITH OR WITHOUT CONDITIONS

11	Notice to Registrar of Deeds and Land Rights Registrar	The relevant authority will send a notice of its approval of the land hold title scheme to the Registrar of Deeds and the relevant Land Rights Registrar. This notice will include a list of all the conditions imposed on the plots in the scheme by the relevant authority.
12	Parallel registration	The Registrar of Deeds will make an endorsement on the title deed of the block/erf stating that a land hold title scheme has been established, and the Land Rights Registrar will enter the scheme in the land hold title register, and register the details of the holders of land hold title rights in the scheme.
13	Registrar issues a Certificate of Land Hold Title Right to every land hold title right holder.	

THE FLEXIBLE

Landless

Tenure Rights

Illegal

Tolerated

Type of Tenure

Unsafe

Security of Tenure

informal / insecure /
eviction threat / poverty

**Informal
Settlement**

**Starter
Title**

None

Contracts

Documentary Proof

None

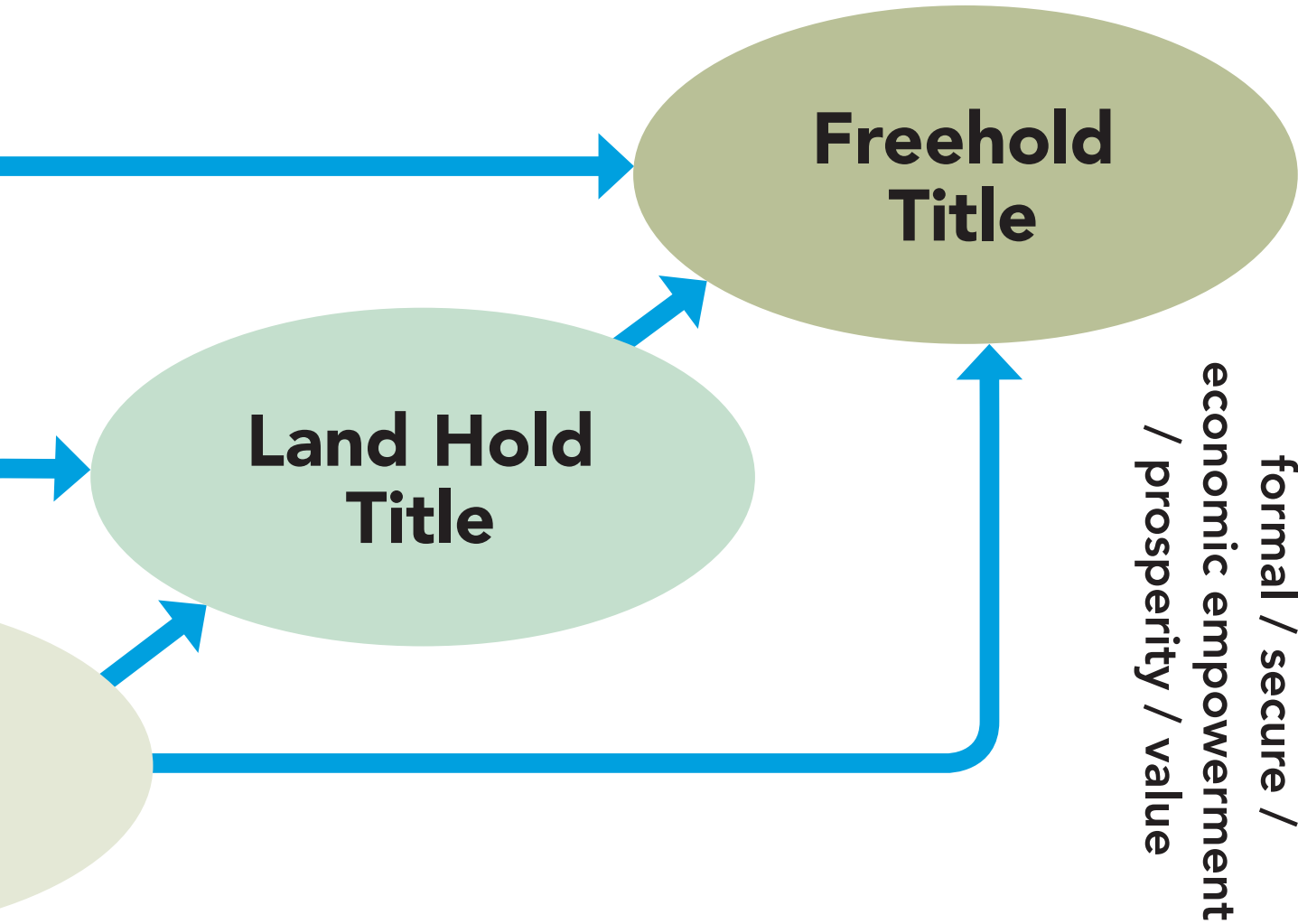
Official Registration

Poor

Provision of

LAND TENURE SYSTEM

Ownership	
Group-based Right	Individual Right
Safe	



Certificate of Title Right	Deed
Land Rights Office	Deeds Registry
Services	Good







MINISTRY OF LAND REFORM
Directorate of Land Reform and Resettlement
REPUBLIC OF NAMIBIA
2016

